



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI-92-33*

FACTS:

You are the City Solicitor of Waltham (the City). The City Council may request you or the City's Law Department (which you supervise) for legal advice whether the City may place "salary caps on Department heads and other senior managerial personnel" and also "place a temporary moratorium on promotions of City employees." You would likely be subject to a salary cap if one were adopted.

QUESTION:

May you or any other lawyer in the Law Department provide this advice?

ANSWER:

So long as it is reasonably foreseeable that you would be subject to a salary cap, you may not participate in this advice, unless the Mayor first makes a written determination under G.L. c. 268A, §19(b)(1), as explained below. Other lawyers in your Department could provide the advice, however, if it were not reasonably foreseeable that the Council action would apply to them, and if you did not participate.

DISCUSSION:

Section 19(a) of G.L. c. 268A generally prohibits a municipal employee from participating in a particular matter in which he knows he has a financial interest. As City Solicitor, you are a "municipal employee" under the conflict law. G.L. c. 268A, §1(g). This request for your Department's official legal advice, as a "request for a ruling or other determination," is a "particular matter." *Id.* §1(k). Since it is reasonably foreseeable that the salary cap would apply to you, you have a "financial interest" in the matter. *See, e.g., EC-COI-89-19; 86-25.* Therefore, you may not participate in giving this advice, whether by giving it yourself or by discussing it with others. *See G.L. c. 268A, §1(j).*

An exemption is available to you from this §19 prohibition. You may obtain this exemption only by advising your appointing authority, the Mayor,^{1/} in writing of your financial interest in this matter. The Mayor could then give you an advance written determination that your financial interest is not so substantial as will likely affect the integrity of your services to the City. §19(b)(1). You would then be free to participate fully in this matter.

Alternatively, other lawyers in your Department could give the requested advice, if it were not reasonably foreseeable that the Council action (either the salary cap or the promotion moratorium) would apply to them. You could not participate, however, even by assigning the matter to a particular lawyer in the Department. *See EC-COI-86-13.* Finally, of course, the City or the Council could retain special counsel to give this advice.

DATE AUTHORIZED: November 5, 1992

* Pursuant to G.L. c. 268B, §3(g), the requesting person has consented to the publication of this opinion with identifying information.

^{1/}Although the City Council confirms your appointment by the Mayor, in such situations a determination by the official who initiates the appointment is sufficient. *See EC-COI-87-41; 88-16 n.1.*